

## Battle Creek City Planning Commission

### Staff report for May 26, 2010 meeting

**To:** Planning Commissioners

**From:** Christine M. Hilton, AICP, Planning Supervisor  
Planning and Community Development Department

**Subject:** Petition S-04-10, a Special Use Permit request for 168 N. 20<sup>th</sup> Street,  
Parcel #9790-25-431-0

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#### Summary

A petition from Mr. Dan Rippinger, representing Summit Pointe, requesting a Special Use Permit to allow an Adult Foster Care Small Group Home for six (6) residents with a (CRS) Crisis Residential Services Certificate at 168 N. 20<sup>th</sup> Street, Parcel #9790-25-431-0, as permitted under the Planning and Zoning Code, Chapter 1290, Sec. 1290.01(b)(7).

#### Background/Property Information

The subject site is located on the southeast corner of N. 20<sup>th</sup> Street and Ingram Street, approximately one block south of Goguac Street, as indicated on the map on page two of this report. The property is 27,240 s.f. (.63 acre) in size with 120' frontage along N. 20<sup>th</sup> Street. City assessing records indicate the structure was constructed in 1920 as a single family home. The property was rezoned in 1989 from R-1B Single Family Residential to O-1 Office District as the request was found to be consistent with the future land use map and provided a buffer between residential and commercial uses on N. 20<sup>th</sup> Street. Since 1989, a variety of office uses including mortgage services have occupied the building. In addition to the structure, there is an existing 20 space parking lot on the north side of the parcel along Ingram Street.





### Surrounding Land Uses / Zoning

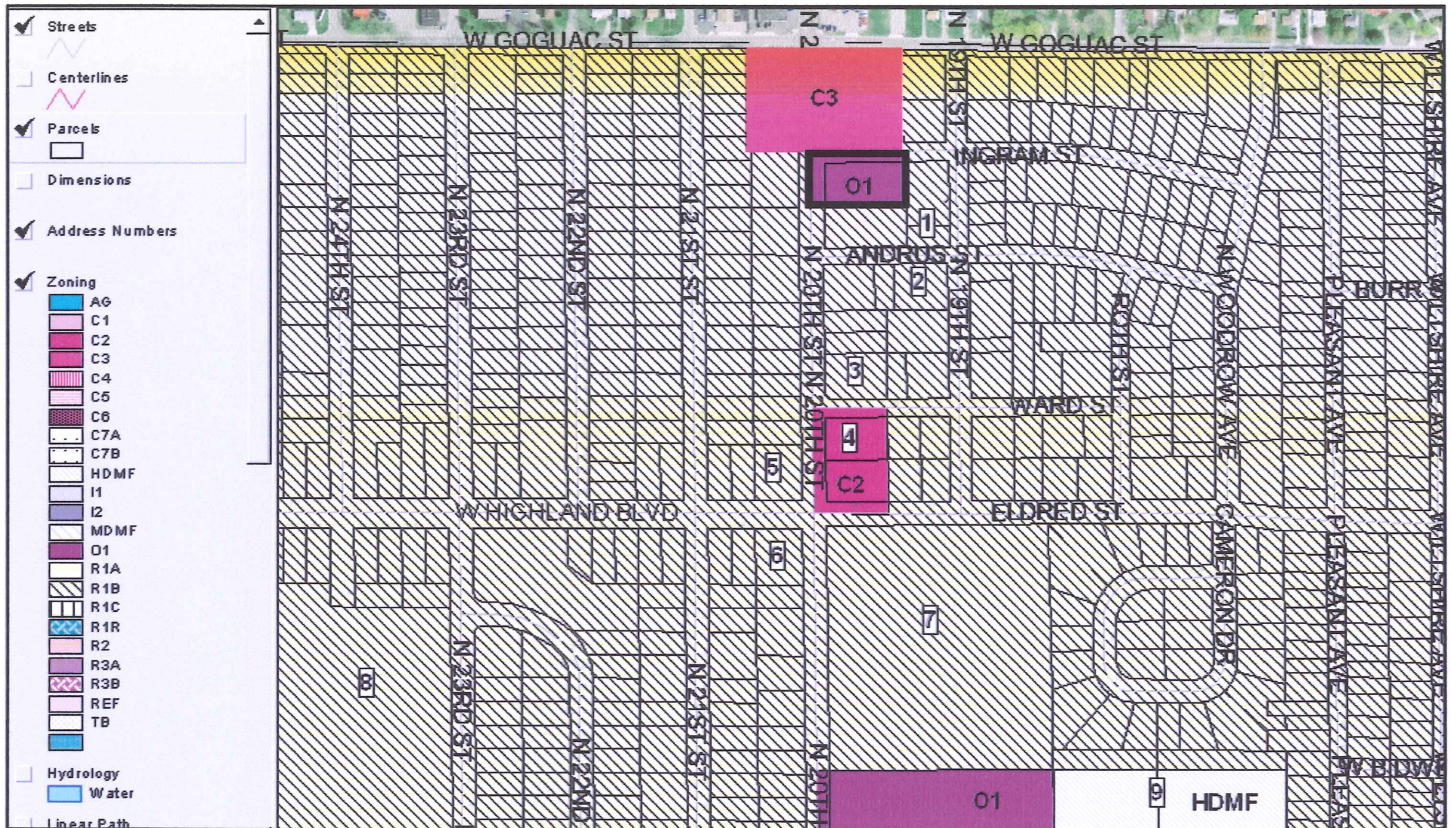
In general, the land uses of surrounding properties are consistent with the zoning districts each are located in:

North – Commercial, C-3 Intensive Business District

East – R1-B Single Family Residential

South – R1-B Single Family Residential

West – R1-B Single Family Residential



Additionally, within this single family residential neighborhood there are a number of complementary non-residential uses and multi-family residential uses; the locations of which are numbered on the above map:

1. Parking lot for Andrus Street Church of God
2. Andrus Street Church of God
3. Church of Christ
4. 12-unit Apartment Building
5. 20<sup>th</sup> Street Clinic, PC
6. Northern Lights Professional Building
7. Mercy Pavilion Medical Facility (vacant)
8. St. Joseph Catholic Church
9. Lakeview Meadows Apartment Complex



Specifically, land uses adjacent to the parcel include:

North – Commercial

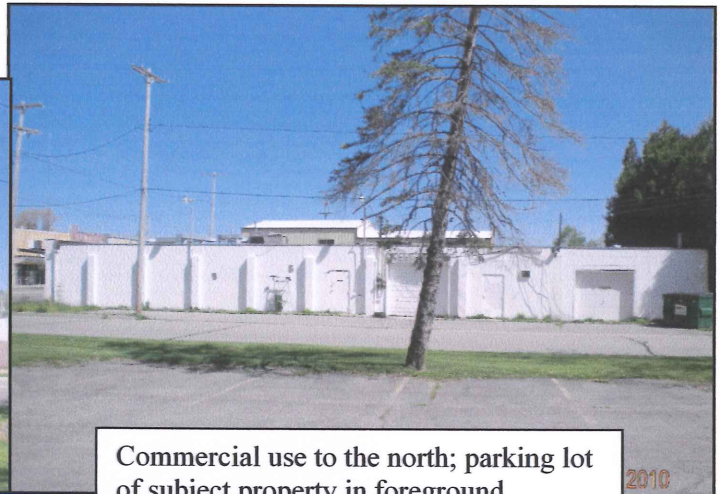
East – Single Family Residential

South – Vacant parcel

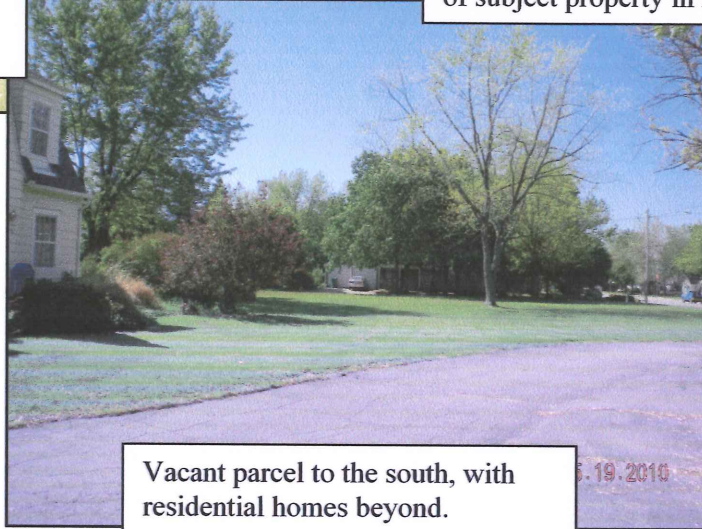
West – Storage area for Walters Plumbing Supply



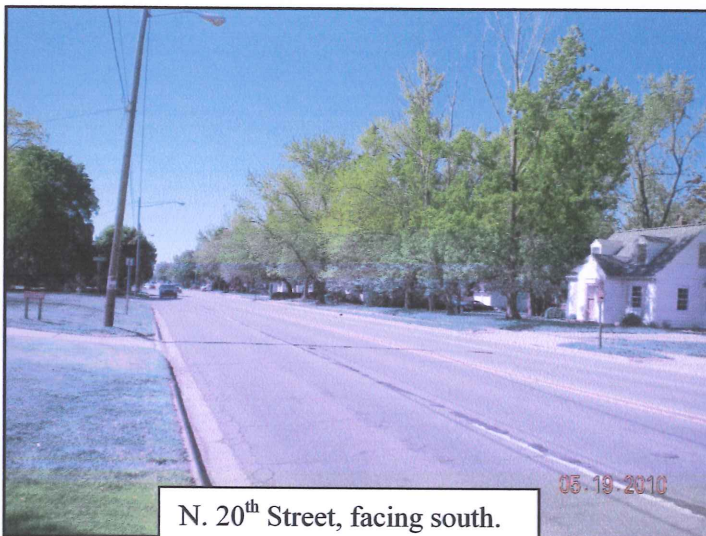
Commercial storage yard to the west of subject property.



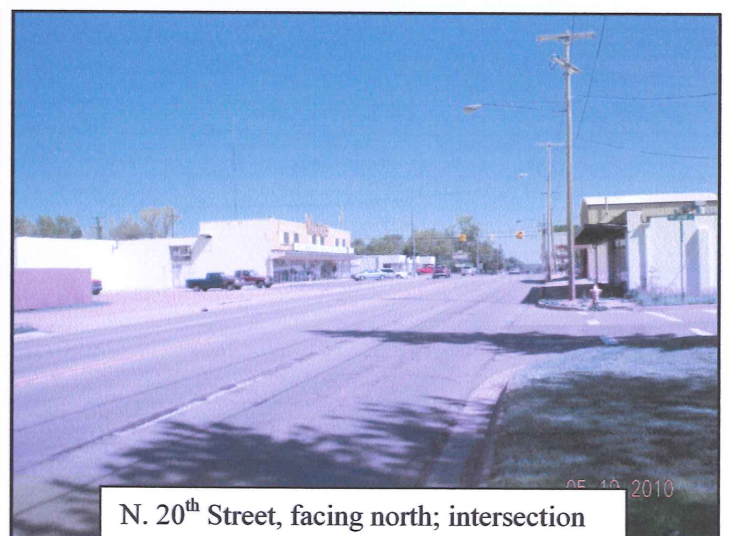
Commercial use to the north; parking lot of subject property in foreground.



Vacant parcel to the south, with residential homes beyond.



N. 20<sup>th</sup> Street, facing south.



N. 20<sup>th</sup> Street, facing north; intersection at Goguac Street in center of photo.



## **Proposed Scope of Project**

Summit Pointe is seeking the special use permit to allow for a total of six residential clients and they have stated that they will have a minimum of two employees on site at all times. Both the Adult Foster Care license and the Crisis Residential Certification have specific regulations that the provider must adhere to, and are regulated, monitored, and enforced by the State of Michigan.

Foster care facilities are regulated by the Michigan Department of Human Services and defined as “the provision of supervision, personal care, and protection in addition to room and board for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation.” Adult foster care facility is further defined as “a governmental or nongovernmental establishment that provides foster care to adults. It includes facilities and foster care family homes for adults (18 or over) that are aged, mentally ill, emotionally disturbed, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care.”

In addition to the State license that is required for the adult foster care, Summit Pointe will also be seeking a Crisis Residential Certification from Michigan Department of Community Health. This certification will allow Summit Pointe to provide mental health services to the residents and is intended to provide a short term alternative to inpatient psychiatric services.

## **Applicable Ordinance Provisions**

The Michigan Zoning Enabling Act of 2006 specifically states that state licensed residential facilities shall be considered a residential use of property for the purposes of zoning and permitted use in all residential zones. The statute further states that they shall not be subject to a special use or conditional use permit or any other procedure different from those required for other dwellings of similar density in the same zoning district.

However, two factors must be considered for this specific property:

- First, while the MZEA states that state licensed residential facilities (i.e. adult foster care) are considered residential and therefore permitted in all residential districts, the subject property is zoned O-1 Office which does not permit any residential uses by right. Therefore, the provisions of the MZEA are not applicable to this request.
- Secondly, the statute that regulates foster care facilities specifically state that the responsibilities of the caregiver are to provide room and board, supervision, protection, and personal care to a resident. The introduction of mental health services to the residents as allowed by the Crisis Residential Certification qualifies this project in a different manner than a typical adult foster care facility.

Therefore, based on these findings, the request from Summit Pointe falls under Chapter 1290 Special Land Uses, specifically 1290.01(b)(7) that allows for “*State licensed residential facilities for more than 6 residents, community residential facilities or group homes*”. Additionally, this type of use could loosely be categorized as “*Public, parochial or private school housing facilities; convalescent or nursing homes; homes for the aged; nursery schools or day care centers (Ch. 1290.01(b)(6))*” or “*Hospitals or institutions (Ch. 1290.01(b)(9))*”, both of which require a special use permit.



### **Public Hearing and Notice Requirements**

As required by the Zoning Enabling Act of 2006, as amended, a public hearing notice was published in the Battle Creek Enquirer on Tuesday May 11, 2010 and notices of the public hearing were also sent by regular mail on Monday, May 10, 2010 to fifty two property owners and occupants of properties located within 300 feet of the subject parcel. To date, the Planning Department has not received any questions or comments relative to this request.

### **Neighborhood Outreach**

The petitioner attended the May 13, 2010 meeting of the Neighborhood Planning Council #3. The request was briefly discussed at this meeting with no apparent objections. However, no action was taken as a quorum of the group was not present. The petitioner will be attending their next meeting on June 10, 2010 to further review their request for a special use permit.

### **Basis For Determination**

As a special use, the Planning Commission is charged with reviewing each Special Use Permit request to determine any effects the proposed use would have on the Master Plan as well as on the character and development of the neighborhood. The ordinance and enabling legislation allows the Planning Commission and the City Commission to impose any conditions upon the request that would ensure the general objectives of the zoning ordinance are met and to preserve property values in the neighborhood.

The request shall be reviewed using the following standards listed in Chapter 1290.04 Basis for Determination (for Special Use Permits):

- (a) The use will be harmonious with and in accordance with the general objectives of the Master Plan.
- (b) The use will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the neighborhood.
- (c) The use will not be hazardous or disturbing to existing or future neighboring uses.
- (d) The use will be a substantial improvement to property in the immediate vicinity and to the community as a whole.
- (e) The use will be adequately served by essential public facilities and services, such as streets, highways, police and fire protection, drainage, refuse disposal and schools, or the persons or agencies responsible for the development shall be able to adequately provide such services.
- (f) The use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.



- (g) The use will not create activities, processes, materials, equipment or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors.
- (h) The use will be consistent with the intent and purpose of this Zoning Code.

### **Analysis and Recommendation**

Staff has reviewed the application and finds that it meets the requirements for submittal and is considered complete. Staff further finds the request consistent with the general standards listed in 1290.04, as outlined herein:

- (a) The use will be harmonious with and in accordance with the general objectives of the City of Battle Creek Master Plan as a vision of the plan (pg. 3-3) holds that accommodating a diversity of people and lifestyles is critical to the long term vibrancy and strength of the city, and that a variety of housing choices and living environments would strengthen the city over time. Additionally, the plan calls for well coordinated, high quality mental and physical health services be available to everyone, and any prevention initiatives be successful (pg. 3-4).

The plan also encourages the coordination between the City and nonprofit housing organizations for housing reinvestment and redevelopment to improve neighborhoods and also provide for diverse living opportunities (pg. 4-12). Furthermore, a goal of the plan is to support affordable, high quality mental health services to ensure they are available to all who need them (pg. 4-22).

- (b) The proposed use will be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the neighborhood as the proposed use is consistent with the original use of the property, no exterior changes are proposed, and any parking requirements are already provided for on-site.

- (c) The use will not be hazardous or disturbing to existing or future neighboring uses as the proposed use encompasses two components, both of which are compatible with surrounding zoning and land uses – residential, which is the historic use of the property; and mental health services, which, as an office would be allowed as a permitted use in the O-1 Office zoning district. Furthermore, the neighborhood, while mostly zoned single-family residential, has a variety of other uses in close proximity to the subject property, all complementary to the residential properties in the area.

- (d) The use will be a substantial improvement to property in the immediate vicinity and to the community as a whole as an existing vacant structure will become occupied and improvements made to the structure that are necessary to fulfill requirements of State licensing.

- (e) The use will be adequately served by essential public facilities and services in that public utilities already exist and no additional needs are required for this use.

- (f) There will be no City expenses associated with the maintenance and improvements to the building, and therefore, the use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.



(g) Because of the residential nature of the use there will be no activities, processes, materials, equipment or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors. Any noise associated with the use will be the result of typical activities found in a residential neighborhood. Furthermore, the approval of the special use permit will allow for a use that has less vehicular traffic than permitted uses in the O-1 zoning district.

(h) The use will be consistent with the intent and purpose of this Zoning Code in that the facility will be subject to compliance with all relevant sections of the zoning ordinance and codified ordinances, including noise, noxious vegetation, and property maintenance. Additionally, it will be required to be in compliance with all State licensing/certificate regulations concerning the proposed use.

**Therefore, as the request meets the general standards listed in Chapter 1290.04 as outlined above, planning staff recommends that the Planning Commission recommend to the City Commission approval of Special Use Permit Petition S-04-10 that would allow an Adult Foster Care Small Group Home with Crisis Residential Certification for a maximum of 6 residents, on Parcel # 9790-25-431-0 with the following conditions:**

**Project Specific Conditions:**

1. All necessary approvals and any required permits shall be obtained from the appropriate agencies, including but not limited to the Department of Public Works, Inspections Department, and the State of Michigan, prior to Certificate of Occupancy.
2. The refuse dumpster that is shown on the site plan must be fully enclosed by an opaque enclosure that exceeds the height of the dumpster in order to provide adequate screening from adjacent properties.

**Administrative Conditions:**

3. Pursuant to Chapter 1232.01 (a), no change in the use or occupancy of land or in the use or occupancy of an existing building shall be made, nor shall any new building be occupied for any purpose, until a certificate of occupancy has been issued by the Zoning Administrator or his or her agent. Such a certificate shall state that the new occupancy complies with Building and Zoning Codes.
4. Pursuant to Chapter 1290.02 (e), certificates of occupancy for special uses shall be valid for a period established by the City Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.



The Planning Commission can add additional conditions to those listed above in the staff recommendation. The Planning Commission may also upon deliberation, choose an alternative action from the following alternatives:

- A1: Postpone the project for specific reasons, with agreement from the applicant;
- A2. Articulate revised rationale of the general standards and/or conditions to recommend to the City Commission Approval OR Denial of the subject application.

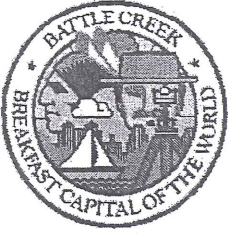
**Attachments**

The following information is attached and made part of this Staff report.

1. Special Use Permit petition Form and Supplemental Information (Petition #S-04-10)



# PETITION FOR A SPECIAL USE PERMIT



## City of Battle Creek, Michigan Department of Planning and Community Development

Petition No. S-04-10

Please read instruction on reverse before completing this form.  
If additional space is required, attach a separate sheet.

The City Commission of the City of Battle Creek, Michigan

Honorable Mayor and City Commissioners:

I / We, the undersigned owner(s) of the property described below and indicated on the attached site plan, do hereby petition for a Special Use Permit under the provisions of Chapter 1290, "Special Uses and Land Development", of the Planning and Zoning Code of the City of Battle Creek, to permit this property to be used exclusively as indicated below.

Legal Description of Property: WIRTS 1ST ADD BLK 2 LOTS 1 THRU 5  
168 N. 20TH ST. (PARCEL # 9790-25-431-0)

Present Use of Property: OFFICES

Proposed Use of Property: Adult Foster CARE (SEE ATTACHED)

Reasons why petitioner feels that a Special Use Permit should be granted:  
BUILDING CURRENTLY ZONED COMMERCIAL: "C1"  
OFFICE

Present Zoning Classification: COMMERCIAL District.  
Property Owner(s) \_\_\_\_\_ or Agent X (Check one)

Name Dan Rippinger (Summit Pointe)

Address 140 W. Michigan Ave

Telephone (269) 422-1668 Fax 966-2844

Signature [Signature]

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

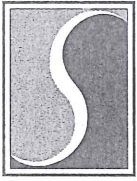
Signature \_\_\_\_\_

### FOR OFFICE USE ONLY

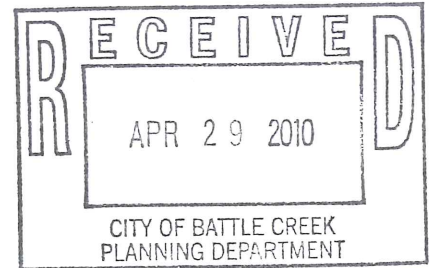
Date Petition Received: 4-29-10  
Petition Fee Received: \$600.00  
Received By: LEONA A PARRISH

Planning Commission Recommendation:  
Approve \_\_\_\_\_ Deny \_\_\_\_\_ Date \_\_\_\_\_  
City Commission Action:  
Approve \_\_\_\_\_ Deny \_\_\_\_\_ Date \_\_\_\_\_  
Resolution No. \_\_\_\_\_





**Summit Pointe**  
140 W. Michigan Avenue • Battle Creek, MI 49017



Zoning Commission  
City of Battle Creek  
Battle Creek, Michigan

**RE: Special Use Permit for a Crisis Residential Service**

To Whom It May Concern:

Summit Pointe operates as the Mental Health Authority for Calhoun County. As such, it has been contracted by the State of Michigan Department of Community Health to provide a range of services to City and County residents grappling with Serious Mental Illness, Developmental Disabilities, Serious Emotional Disorders, and Substance Use Disorders. To do this effectively, Summit Pointe is contractually required to create and maintain an array of services and providers able to address the full range of residents' mental health needs.

Historically, in the absence of a local provider, Summit Pointe maintained contracts with CRS providers in Kalamazoo and Hillsdale Counties. However, transport to these services was experienced as a burden by residents and their concerned families. In addition, Calhoun County residents were in "competition" for limited beds with residents of other Counties; understandably, local county residents in Kalamazoo and Hillsdale had first access to services. This difficult situation became even more tenuous when Kalamazoo County terminated its contract with its long-term CRS provider and conducted a search for a new provider. It became apparent that a more user-friendly solution would better meet Calhoun County residents.

In pursuit of this objective, Summit Pointe is in the process of developing a locally-based Crisis Residential Service (CRS) for residents that will assist residents who are experiencing psychiatric or emotional distress—short of requiring inpatient psychiatric admission. This would ensure that Calhoun County residents get rapid, effective services and that families would not need to leave the County to get services for family members. [N.B.: In addition, establishment of a CRS site in Battle Creek would afford the creation of a minimum of 6 full-time jobs.]

The CRS would meet the service specifications defined in the Medicaid Provider Manual for the State of Michigan. Please refer to the **MENTAL HEALTH/SUBSTANCE ABUSE** Chapter, specifically **Section 6—Crisis Residential Services**, Sections 6.1 through 6.8 for a more detailed description. The Provider Manual may be found at the following website:  
[http://www.michigan.gov/mdch/0,1607,7-132-2945\\_5100-87572--,00.html](http://www.michigan.gov/mdch/0,1607,7-132-2945_5100-87572--,00.html)

P: 269/966-1460

F: 269/966-2844

[www.summitpointe.com](http://www.summitpointe.com)  
A Venture Behavioral Health Partner

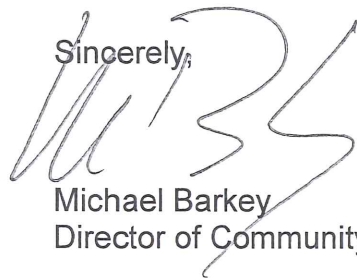
The CRS site we are proposing is located at **168 North 20<sup>th</sup> Street, Battle Creek, Michigan, 48017**. It would be licensed as an Adult Foster Care Facility and under the initial and continuing inspection of the Michigan Department of Human Services. It would also require initial and continuing certification as a Crisis Residential Service by the Michigan Department of Community Health. It would also be continuously monitored by Summit Pointe in its role as the Mental Health Authority and by Venture Behavioral Health (the Medicaid Prepaid Specialty Health Plan).

Summit Pointe respectfully requests approval of the Special Use Permit for the proposed site.

Please let us know if there is more that you require. I may be reached at either 269.966.1460 (Phone) or 269.873.8288 (Cell).

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'M Barkey', with a large, stylized flourish extending from the end of the signature.

Michael Barkey  
Director of Community Development





"Dan x. Rippinger"  
<dxr@summitpointe.org>  
>

04/29/2010 03:03 PM

To <laparrish@ci.battle-creek.mi.us>

cc

bcc

Subject 168 N 20th street

We are requesting this special use permit to house 6 individuals.

**CONFIDENTIALITY:**

The information contained in this electronic mail message and any attachments is intended only for the use of the individual or entity to whom it is addressed and may contain legally privileged, confidential information or work product. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution, or forwarding of this email message is strictly prohibited. If you received this message in error, please notify Venture Support at [techsupport@ventechcenter.org](mailto:techsupport@ventechcenter.org) or (269)441-8324.

TREE LINE / PROPERTY

74'

REFUSE  
CONTAINER

70'

80'

INGRAM

ANDRUS

Building  
Structural  
Footprint

ADDITION  
1997

EXISTING  
PARKING LOT  
30 SPACES  
2 BF

Grass  
/ LANDSCAPE

N 20th Street

SCALE  
1/16" = 1 ft

→ NORTH





**Summit Pointe**

140 W. Michigan Avenue • Battle Creek, MI 49017

April 15, 2010

ATTENTION: BATTLE CREEK PLANNING COMMISSION

This correspondence is to confirm that Mr. Daniel Rippinger is the Director of Facilities for Summit Pointe, located at 140 W. Michigan, Battle Creek, Michigan 49017, and that he has the authority to represent our organization at the Battle Creek Planning Commission meeting in regards to a special use permit for the property located at 168 N. 20<sup>th</sup> Street, Battle Creek, Michigan 49015.

If you require additional information or verification, you may contact either myself or Mr. Robert Lambert, COO, at (269) 966-1460.

Sincerely,

Ervin R. Brinker  
CEO

ERB/ds

P: 269/966-1460

F: 269/966-2844

[www.summitpointe.com](http://www.summitpointe.com)  
A Venture Behavioral Health Partner

April 29, 2010

To Whom It May Concern:

Re: 168 N. 20<sup>th</sup> St, Battle Creek MI – (13-97-90-254-310)

Please be advised that 20<sup>th</sup> Ave LLC, owner of the mentioned property, gives permission for Calhoun County Community Mental Health Authority to apply for and receive a variance for a special use permit for an Adult Foster Care.

Feel free to contact me if I can be of further assistance at (616)560-3397.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott DeWolf', with a stylized, cursive-like script.

Scott DeWolf  
20<sup>th</sup> Ave LLC, its member



**LETTER OF INTENT  
LEASE WITH OPTION TO PURCHASE**

**ADDRESS:** 168 N. 20<sup>th</sup> Street

**SQUARE FOOTAGE:** Approximately 2,722 Square Feet

**BASE TERM:** Five (5) years

**BASE RENTAL:** \$6.61 PSF/NNN

**PAYMENT:** \$1,500.00 Monthly, triple net

**TENANT EXPENSES:** Tenant shall pay all maintenance, including lawn and snow care, janitorial to the exterior common areas, real estate taxes, and insurance. Tenant shall also pay utilities servicing the interior of leased premises.

**COST OF LIVING ADJUSTMENT:** Annual CPI index capped at 2% annually.

**COMMENCEMENT DATE:** July 1, 2010

**OCCUPANCY DATE:** Upon approval of the City of Battle Creek, but no later than July 1, 2010.

**SECURITY DEPOSIT:** One month's rent to be paid at time of signing of lease

**ADVANCE RENTAL:** One month's rent to be paid at time of signing of lease

**SIGNAGE:** Insert to be paid by Tenant

**USAGE:** Tenant shall conform to zoning and use ordinances and assumes responsibility for securing all required occupancy and use permits.

**OPTION TO PURCHASE:**

**A. PRICE:** \$170,000.

**B. TERMS:** Cash or new mortgage

**C. TIMEFRAME:** Buyer may purchase the building at anytime during the lease, however, the purchase price shall increase one (1%) percent per year until the option expires.

**D. OPTION AMOUNT:** Buyer shall pay Seller at lease signing a non-refundable deposit of \$4,000. This amount shall be applied to the purchase price at the time the buyer exercises the option to purchase.

**E. OPTION EXPIRATION:** If Tenant does not exercise the option to purchase, Tenant shall return the premises back to the original condition as when taken at their own expense, normal wear and tear accepted. Language to be addressed in the lease.

**OTHER PROVISIONS:**

Buyer is represented by Dustin Damon, Remax and Seller is represented by Sandy Edwards, Callander Commercial. Commission shall be paid in accordance with a separate listing agreement between Sellers and listing agent. Commission shall be split 50/50 between Remax and Callander Commercial. Commissions paid on the lease shall be credited to the purchase commission at the closing of the sale.

**Insurance and Utilities:**

Insurance would be required by Tenant to cover the building and liability which would also protect the landlord and landlord's bank (Tenant needs to check with their agent). These items will be addressed in the lease.

**Repairs and Maintenance:**

Repairs and maintenance will be addressed in the lease, however, Landlord will agree that if maintenance, repairs, or replacement of mechanical systems (other than service contracts) exceeds \$1,500 per year and then it is the Landlords responsibility for the balance in that year.

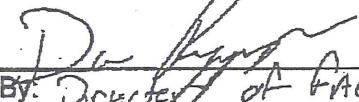


**EARNEST DEPOSIT:**

\$7,000.00 to be deposited with Callander Commercial upon signing of an acceptable Agreement, these funds shall be applied toward the first month's lease payment and security deposit. It is understood by all parties that this Letter of Intent is a non-binding communication, designed specifically to explore whether or not the basic parameters of an agreement can be reached and agreed upon by the Landlord and the Tenant.

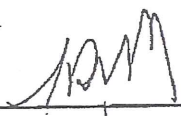
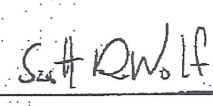
This agreement and any previous agreements will expire if this agreement is not signed by no later than April 30, 2010 at 5:00 p.m..

**SUBMITTED BY (Tenant/Purchaser):** Calhoun County Community Mental Health Authority

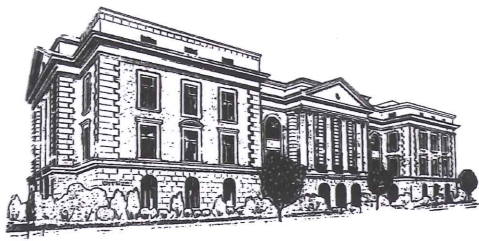
By:   
Its: DIRECTOR OF FACILITIES

Date: April 29, 2010

**ACCEPTED BY (Landlord/Seller):** 20<sup>th</sup> Avenue, LLC

By:    
Its: member

Date: 4/29/10



## Battle Creek City Planning Commission

**To:** Planning Commissioners

**From:** Christine M. Hilton, AICP, Planning Supervisor  
Planning and Community Development Department

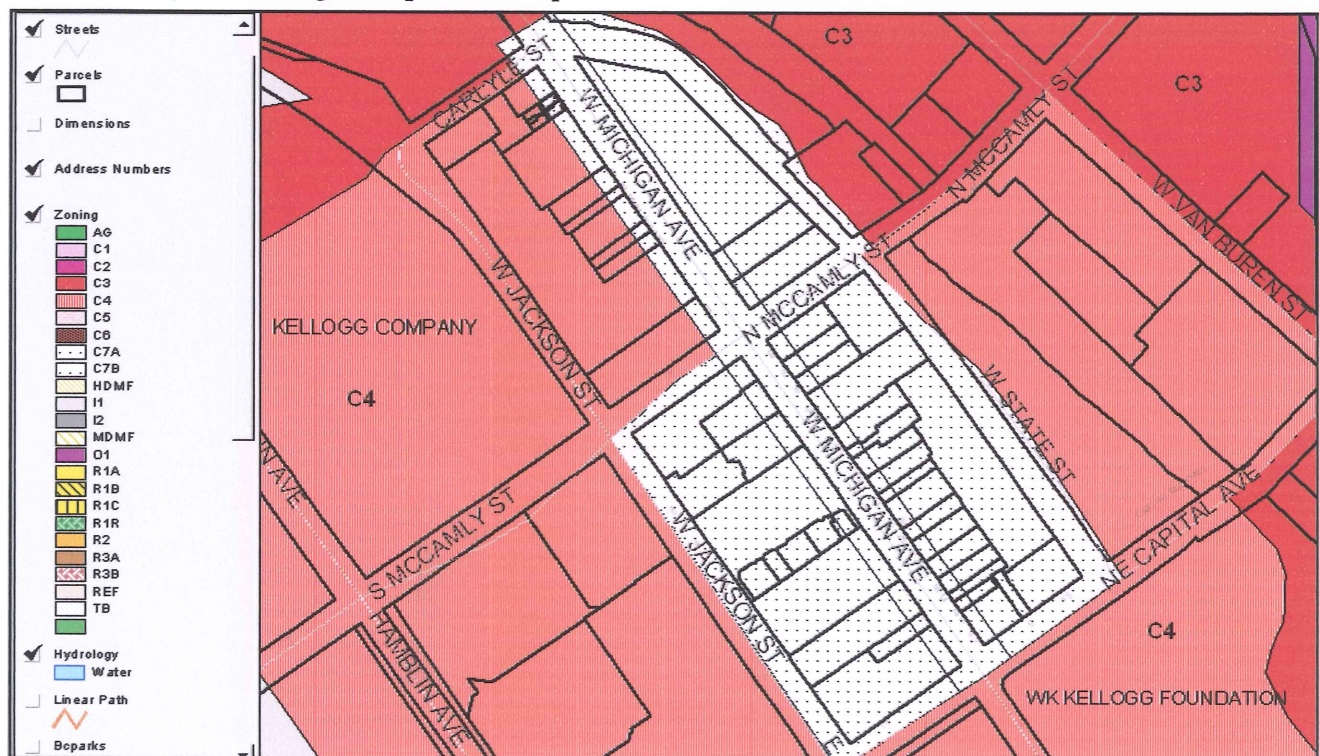
**Date:** May 18, 2010

**Subject:** Proposed amendment to the C-7 Street Level Retail zoning district

Attached is a request from the Downtown Partnership to amend the C-7 Street Level Retail zoning district. This amendment would remove sub-districts A and B from the C-7 zoning district, and all current permitted uses would be allowed without restriction as to the location in a building.

### Location of district

There is only one C-7 Street Level Retail zoning district in the City; it is located in the downtown area, generally located along W. Michigan Avenue between Capital Avenue and Carlyle Street as further highlighted below in white. There are approximately thirty-five private properties in this zoning district, many containing multiple tenant spaces.





## **History of district**

Prior to 1992 these and other properties in the downtown area were zoned C-4 Central Business District. The permitted uses in the Central Business District zoning designation have historically remained unchanged. While it allows those uses permitted in less intensive commercial districts including retail, office, and service oriented uses, it also allows for fairly intensive commercial and light industrial activities including processing, testing, and specific manufacturing uses.

In 1992 in order to limit the types of uses permitted along Michigan Avenue, the main corridor in the historic downtown core, and to promote consumer and pedestrian activity, the City adopted the C-7 Street Level Retail zoning district ordinance and the properties in the district were rezoned accordingly.

The C-7 zoning district specifies two sub-districts, C-7A and C-7B. C-7A is defined as the first 25 feet of the main floor of a building in this zoning district; C-7B is defined as the remainder of the building including the balance of the first floor, the basement, and any additional upper floors. The intent of the sub-districts were to specifically allow those uses that attract a high level of consumer and pedestrian activity, including retail sales, galleries, services, museums, restaurants, etc., on the main floor of a building directly adjacent to the street and sidewalk (C7-A). Other uses that may not promote as much activity, though still important to downtown, were allowed in the remainder of the building (C7-B).

There have been a few amendments to the ordinance in past years, mainly to add new permitted uses and clarify definitions.

## **Challenges of existing ordinance**

To restrict the use of ground floor storefront tenant space to those uses that encourage consumer and pedestrian activity is good in theory and has been used in numerous communities as a downtown revitalization tool. However, the form and function of downtowns in general are dynamic and continue to fluctuate with the economy as well as cultural and lifestyle practices and attitudes. From an economic development standpoint it would be very difficult to recruit and attract those specific uses for every ground floor tenant space in this district, and as such it has been difficult to fill existing vacancies because of the use limitations of the ordinance.

The Downtown Partnership expressed their intention to still heavily recruit those uses that attract activity on the streets, sidewalks, and downtown in general, but also recognizes that a larger employment base in downtown and less storefront vacancies would likely facilitate the need for additional retail shops, restaurants, and similar uses.

From a City staff perspective, the ordinance has been difficult to administer. The ordinance states that the C7-A sub-district is the frontage of a building to a depth of 25' as measured from the building line of a structure. However, due to the historical use of a building and the changing historical styles of storefronts, there may be structural elements present including recessed entryways, large display windows, etc. that wouldn't adequately allow a use listed under the C7-A sub-district. Additionally, the zoning code is silent on the separation between uses if the ground floor of a building contains more than one use.



## **Discussion**

Because of the challenges with the existing ordinance, the Downtown Partnership Board formed a committee to meet with City staff to review the ordinance and discuss possible amendments. The committee met on March 31, 2010 and found that the existing list of permitted uses for both the C7-A and C7-B districts were appropriate for the entire district without limitation as to location in a building. Based on this input, planning staff presented the proposed revision to the full Board at their April 27, 2010 meeting; the Board unanimously recommended that the revised ordinance be submitted to the City for approval.

## **Proposed Amendment**

Attached is the proposed ordinance amendment as recommended by Downtown Partnership. The changes are shown on the draft, and include:

- All references to the sub-districts A and B have been removed and the list of permitted uses has been combined.
- The definition of “financial institutions” has been expanded in Ch. 1271.03(i) to specify that cash advance establishments are not considered financial institutions, and therefore not allowed in this zoning district.
- The revision removed “churches and missions” from Ch. 1271.11 Prohibited Uses, in accordance with the Religious Land Use and Institutional Persons Act of 2000. Religious assembly uses are permitted in the City of Battle Creek by Special Use Permit.

## **Public Hearing Requirements**

As required by the Zoning Enabling Act of 2006, as amended, a public hearing is required for an ordinance amendment, and a notice listing the date, time, and subject of a public hearing is required to be advertised no less than fifteen days prior to the hearing. As such, the public hearing notice was published in the Battle Creek Enquirer on Tuesday, May 11, 2010. To date, no public comments have been received in the Planning Department.

## **Recommendation Action**

In trying to address the ongoing challenges in the downtown that are further exacerbated by the use/location limitations in the current ordinance, staff recommends that the Planning Commission make a favorable recommendation of the adoption of the ordinance amendment to the City Commission.



**Battle Creek Downtown Partnership**

115 W. Michigan Avenue | Battle Creek, MI-USA 49017  
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[www.downtownbattlecreek.com](http://www.downtownbattlecreek.com)

May 18, 2010

City of Battle Creek  
Attn: Christine Hilton, Planning Supervisor  
77 E. Michigan Ave., Ste 204  
Battle Creek, MI 49017

Dear Christine:

On April 27, the Battle Creek Downtown Partnership voted unanimously to support revising the current C7 Retail Ordinance by removing the C7 A and B sub-districts. A less-restrictive ordinance would enable building owners to sell or lease their space to a greater variety of businesses than currently allowed.

The fact that special use permits are needed by over 30 types of businesses would negate the possibility of an undesirable business locating on Michigan Avenue in the Central Business District.

Sincerely,

William J. Schroer

Chair, Battle Creek Downtown Partnership Board of Directors

**Downtown Partnership - May 2010**  
**Draft revision to the Planning Commission**  
**Proposed amendment to remove sub-districts**

**CHAPTER 1271**

**C-7 Street-Level Retail District**

- 1271.01 Applicable regulations.
- 1271.02 Purposes; ~~C-7A and C-7B Street Level Retail Subdistricts defined.~~
- 1271.03 Definitions.
- 1271.04 Permitted uses.
- 1271.05 Erection of poles and wires.
- 1271.06 Height, width, lot area, building coverage, sign and site plan review requirements.
- 1271.07 Mixed commercial and residential uses.
- 1271.08 Off-street parking and loading.
- 1271.09 Conflicts with State of local business licensing requirements or regulations.
- 1271.10 ~~Determination of ground floor zoning of buildings on corner of corridor and noncorridor streets.~~
- 1271.11 Prohibited uses.

***CROSS REFERENCES***

Zoning and planning in home rule cities - see M.C.L.A. Sec. 117.4i

Regulation of location of trades, buildings and uses by local authorities - see M.C.L.A. Sec. 125.581

Regulation of buildings; authority to zone - see M.C.L.A. Sec. 125.582

Regulation of congested areas - see M.C.L.A. Sec. 125.583

Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property - see M.C.L.A. Sec. 125.583a



Central Business District regulations - see B.R. & T. Ch. 814

Commercial businesses - see B.R. & T. Ch. 822

Rental housing - see B. & H. Ch. 1463

## **1271.01 APPLICABLE REGULATIONS.**

(a) The regulations set forth in this chapter, or set forth elsewhere in this Zoning Code, when referred to in this chapter, are the district regulations of the C-7 Street-Level Retail District, ~~which shall be composed of a C-7A Street-Level Retail Subdistrict and a C-7B Street-Level Retail Subdistrict.~~

(b) The restrictions and regulations of Chapter 814 shall be applicable to this chapter.

(Ord. 25-92. Passed 11-24-92.)

## **1271.02 PURPOSES; ~~C-7A AND C-7B STREET-LEVEL RETAIL SUBDISTRICTS DEFINED.~~**

~~—(a) It is the purpose of this chapter to create a core or corridor of store fronts which are more restrictive in their use and compatible with pedestrian traffic. A C-7A Street-Level Retail Subdistrict means the ground floor frontage of a premises to a depth of twenty-five feet back from the building line of any structure located on either side of a designated primary core or corridor street, pedestrian mall or arcade.~~

~~—(b) It is the purpose of this chapter to surround the C-7A Street-Level Retail Subdistrict areas with uses compatible with uses permitted in the core area but which are more amenable to vehicular traffic and which meet the demand for this kind of space so as to provide a greater variety of use in the remaining portions of buildings and serve as a buffer between adjacent zoning districts. A C-7B Street-Level Subdistrict comprises all areas not defined as a C-7A Street-Level Retail Subdistrict in a C-7 Street-Level Retail District so as to include upper floors, basements and the rear depth of the ground floor in excess of the twenty-five feet of depth from the front building line of the structure.~~

(c) The C-7 Street-Level Retail District is established to revitalize commercial areas which, through business relocation, substantial change in surrounding uses, changes in the market, or a combination thereof, require the orderly placement of business establishments to provide the maximum use of buildings to accommodate and respond to changes in vehicular and pedestrian traffic flow. To permit the full potential of this District, certain uses which would interfere with the general effectiveness of this District have been intentionally excluded, and uses permitted herein are intended to be strictly limited in their definition.

(Ord. 25-92. Passed 11-24-92.)

## **1271.03 DEFINITIONS.**

As used in this chapter:

(a) "Apartment" means a living unit of at least 500 square feet which is intended or designed for use as a residence by a single family and which includes its own kitchen and bath facilities.

(b) "Art gallery" means a premises used for the display and sale of original works of art.

(c) "Art studio" means a building used for the production, display and sale of works of art.

(d) "Banquet and meeting hall" means a premises available to the public for rental for the purpose of holding meetings, banquets and receptions.

(e) "Box office" means a premises, not necessarily attached to a theater, museum, exhibition hall or athletic facility, used for the sale of tickets for admission to entertainment, including, but not limited to, athletic events, theatrical performances, museum admissions or concerts.

(Ord. 25-92. Passed 11-24-92.)

(e) (1) "Brewpub" means a licensed facility that manufactures and sells at that licensed premises not more than 2,000 barrels of beer/ale per year for consumption on that premises only.

(Ord. 4-96. Passed 6-4-96.)

(f) "Church" means a building that people regularly attend to participate in or hold religious services, meetings or other religious activities of any denomination. The term "church" also includes synagogues, temples and mosques.

(g) "Collectibles shop" means a business limited to the sale or trade of first-edition hardcover books, board or electronic games, including card games, computer games, role-playing or miniature games, CD's, DVD's, sports trading cards, comic books, stamps, coins, antique jewelry or a combination thereof. The term "collectibles shop" does not include secondhand goods dealers or pawn shops.

(Ord. 09-06. Passed 4-18-06.)

(h) "Exhibition hall" means a premises open to the public for the viewing of temporary exhibits of collections or displays of items relating to, or artifacts of, natural, local, State or national history; the presentation of theatrical performances or musical concerts; or the holding of flea markets, swap meets or other shows involving the sale or trade of publicly displayed items and merchandise.

(i) "Financial institutions" means banks, savings and loans, credit unions, mortgage or loan companies and stock brokers. The term "financial institutions" does not include pawnbrokers, ~~or~~ bail bondsmen, or cash advance establishments.



(j) "Florist shop" means a business whose principal purpose is the display and sale of natural and silk flowers, arrangements of flowers and decorative accessories used in the display of flowers.

(k) "Interior decorating and design studio" means a business which displays interior decorating and design merchandise, such as furniture, wallpaper, fabric, floor coverings and accessories as samples shown on the premises which individuals may order from catalogues. The term "interior decorating and design studio" does not include the warehousing of interior decorating and design merchandise for on-site retail sale.

(Ord. 25-92. Passed 11-24-92.)

—k) (1) "Microbrewery" means a brewery that produces less than 20,000 barrels of ale/beer per year for on-site consumption, take-out and distribution to wholesalers and/or restaurants, taverns and retail stores, and is open to the general public for sales and tours.

(Ord. 4-96. Passed 6-4-96.)

(l) "Mission" means a facility providing temporary lodging and ancillary services, such as the provision of food, clothing or other services, to alleviate the suffering of indigent, needy, homeless or transient persons.

(m) "Museum" means a premises used for the storage and display of artifacts, memorabilia and works of art which are open to public viewing.

(n) "Photocopy service" means a business that reproduces drawings, plans, maps or other documents by means of blueprinting or photocopying.

(o) "Print shop" means a retail establishment which provides duplicating services using photocopy, blueprint or off-set printing equipment, which may also include the collating of booklets and reports.

(p) "Private club" means a premises not open to the public and used for the meeting of a nonprofit organization of persons operated for the promotion and promulgation of common interests. The term "private club" does not include churches and missions.

(q) "Professional offices" means, by way of example, but is not limited to, an attorney's offices, an architect's offices, an engineer's offices, insurance offices, an accountant's offices and real estate offices, but not medical, dental or veterinary offices, clinics or laboratories.

(r) "Retail sales" means the sale of new, unused goods.

(s) "Tailor, dressmaking or millinery shops" means premises used for the custom manufacture of clothing and hats as well as the alteration and repair of clothing and hats.



(t) "Visitor information center" means a premises used for the dissemination of cultural, historic or tourist information.

(u) "Work of art" means an original creation, such as, but not limited to, oil, acrylic or water color paintings, clay, pottery or papermache sculptures or screened or photographic prints, of such a nature as to be suitable for a juried art exhibition or auction. The term "work of art" does not include objects which are knitted or crocheted, items created by a kit, wooden toys or other similar craft or hobby items made from a pattern.

(Ord. 25-92. Passed 11-24-92.)

#### **1271.04 PERMITTED USES.**

(a) In a C-7A Street-Level Retail Subdistrict, a building or premises shall be used only for the following purposes:

- (1) Retail sales;
- (2) Art gallery;
- (3) Museums;
- (4) Visitor information centers;
- (5) Beauty and barber shops;
- (6) Tailor, dressmaking and millinery shops;
- (7) Financial institutions;
- (8) Photography studios;
- (9) Restaurants, including fast food restaurants, but not including drive-in restaurants;
- (10) Pet shops, but not kennels or veterinary offices;
- (11) Printing and photocopying shops ~~occupying less than 1,000 square feet;~~
- (12) Theaters having a minimum of fifty seats;
- (13) Travel bureaus;
- (14) Collectible shops;
- (15) Florist shop;

(16) Exhibit hall;

(17) Stores for the collection and distribution of laundry and dry cleaning, but not for the actual treatment, cleaning or processing of such articles;

(18) Photographic film sales and development shops;

(19) Shoe repair/shoe shine shops;

(20) News and magazine stands;

(21) Box offices;

(Ord. 25-92. Passed 11-24-92.)

(22) Microbreweries and brewpubs; and

(Ord. 4-96. Passed 6-4-96.)

(23) United States Military forces, including the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marines, U.S. Coast Guard, and National Guard recruiting offices.

(Ord. 17-07. Passed 11-20-07.)

~~—(b) In a C-7B Street Level Retail Subdistrict, in addition to any use permitted in a C-7A Street Level Retail Subdistrict, a building or premises, or the remainder of a building or premises, may be used only for the following purposes:~~

~~(124)~~ Professional offices;

~~(225)~~ Artist studios;

~~(326)~~ Banquet and meeting halls;

~~(427)~~ Private clubs;

~~(528)~~ Employment agencies;

~~(629)~~ In-door health and fitness facilities;

~~(730)~~ Medical or dental, but not veterinary, offices, clinics and laboratories;

~~(831)~~ Private trade, vocational, art, business, dance or music schools;

~~(932)~~ Recording studios;

- (1033) Reading rooms;
- (1134) Interior decorating studios;
- (1235) Child day-care centers;
- (1336) Apartments on the second floor, or higher;
- (1437) Small appliance repair shop;
- (1538) Video rental stores;
- (1639) Dance studios;
- (1740) ~~Printing and photocopying shops occupying 1,000 or more square feet.~~

(Ord. 25-92. Passed 11-24-92.)

#### **1271.05 ERECTION OF POLES AND WIRES.**

No person shall erect poles or wires for telephone, telegraph, cable television or power distribution purposes within the boundaries of a C-7 Street-Level Retail District.

(Ord. 25-92. Passed 11-24-92.)

#### **1271.06 HEIGHT, WIDTH, LOT AREA, BUILDING COVERAGE, SIGN AND SITE PLAN REVIEW REQUIREMENTS.**

Uses provided for in this chapter are subject to the maximum height, width, lot area, building coverage, sign and site plan review requirements of a C-4 Central Business District.

(Ord. 25-92. Passed 11-24-92.)

#### **1271.07 MIXED COMMERCIAL AND RESIDENTIAL USES.**

Commercial and residential uses may occupy the same building, provided that the residential use is limited in its entirety to the second level or higher of the building and meets the requirements of the Building and Housing Code and all State building and fire codes.

(Ord. 25-92. Passed 11-24-92.)

#### **1271.08 OFF-STREET PARKING AND LOADING.**

Off-street parking and loading requirements shall be in accordance with Chapter 1284, provided that in the case of mixed uses, the number of parking spaces shall equal the sum of the requirements for each use computed separately.



(Ord. 25-92. Passed 11-24-92.)

### **1271.09 CONFLICTS WITH STATE OR LOCAL BUSINESS LICENSING REQUIREMENTS OR REGULATIONS.**

Nothing in this chapter is intended or should be construed as a waiver of any State or local business licensing requirement or regulation.

(Ord. 25-92. Passed 11-24-92.)

### **~~1271.10 DETERMINATION OF GROUND FLOOR ZONING OF BUILDINGS ON CORNER OF CORRIDOR AND NONCORRIDOR STREETS.~~**

~~—The ground floor zoning of a building located on the corner of a corridor street and a noncorridor street shall be determined by the location of the door used for customary street level access to such building.~~

(Ord. 25-92. Passed 11-24-92.)

### **1271.11 PROHIBITED USES.**

The following uses are prohibited in a C-7 Street-Level Retail District:

- (a) Adult businesses regulated by Chapter 1295;
- (b) Any form of transient dwelling, including, but not limited to, rooming houses, boarding houses, tourist homes, motels or hotels.
- (c) Retail sales of motor vehicles, motorcycles, recreational vehicles or motor homes, or the retail sale of motor vehicle or motorcycle parts.
- (d) Retail sales of large household appliances, such as washing machines, dryers, stoves, refrigerators, freezers or hot-water heaters.
- ~~—(e) Churches and missions.~~

(Ord. 25-92. Passed 11-24-92.)